

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 28

ESCROW DEPOSITORIES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-28-1 Objectives. The objectives of this chapter are to implement the requirements of chapter 449, Hawaii Revised Statutes, and set forth procedures regarding escrow depositories. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-2)

§16-28-2 Definitions. As used in this chapter:
"Commissioner" means the commissioner of financial institutions, the official responsible for licensing and regulating escrow depositories.

"Division" means the division of financial institutions, department of commerce and consumer affairs, State of Hawaii. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-2)

§16-28-3 Public review of escrow depository applications and records; exceptions. (a) All applications and supporting documents that are filed by a proposed escrow depository may be available for public review within one working day following receipt of a written request to review the records.

(b) All applications, supporting documents, and records filed by an escrow depository, including audited statements and records relating to bonding and insurance, may be available for public review within one working day following receipt of a written request to review the records.

(c) Information claimed by an applicant or escrow depository to be confidential shall be submitted on separate pages which can be detached from the rest of the application or filing and shall be identified by the words "Submitted as Confidential" printed on the top of each page. Information submitted as being confidential shall be accompanied by a separate statement requesting confidential treatment and providing reasons and authority for maintaining confidentiality. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-5, 449-5.5, 449-6, 449-7.5, 449-8, 449-9, 449-11, 449-12, 449-13, 449-15)

§16-28-4 Confidential portion of application or records. No material contained in any application or record shall be made available to the public if it is determined by the commissioner to be confidential. Information that may be considered confidential includes, but is not limited to the following:

- (1) Commercial or financial information, the disclosure of which would, or would be likely to, result in substantial competitive harm to the applicant or escrow depository;
- (2) Information, the disclosure of which could seriously affect the financial condition of the applicant or escrow depository; or
- (3) Personal information, the release of which would, or would be likely to, constitute an unwarranted invasion of privacy. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-5, 449-5.5, 449-6, 449-7.5, 449-8, 449-9, 449-11, 449-12, 449-13, 449-15)

SUBCHAPTER 2

APPLICATION FORMS AND FEES

§16-28-10 Application for license. (a) Any person desiring to obtain an escrow depository license shall file DFI Form 449/1 in duplicate.

(b) The application fee of \$200 shall be paid by check made payable to the department of commerce and consumer affairs concurrently with the filing of the application. The fee shall be nonrefundable.

(c) The applicant shall provide public notice and an opportunity to comment on the application, as prescribed by subchapter 3.

(d) The application shall be subject to standards of review and decisions, as prescribed by subchapter 4. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-5, 449-6, 449-7, 449-7.5, 449-8, 449-14)

§16-28-11 Establishment of branch office. (a) A notice of the establishment of a branch office shall be filed with the commissioner within thirty days after establishment of the office. The notice shall be in letter form and shall contain the following information:

- (1) The exact location of the proposed site, including street address; and
- (2) The name and qualifications of the designated escrow officer or other principal officer who will manage the office.

(b) The fee of \$5 for the new branch office shall be paid by check made payable to the department of commerce and consumer affairs. The fee shall be nonrefundable.

(c) Unless otherwise stated, all information pertaining to the notice shall be designated as public information. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-7.5, 449-14)

§16-28-12 Relocation of existing office or branch. (a) An escrow depository shall give notice to relocate an existing office or branch by filing an application with the commissioner thirty days prior to the proposed relocation. The application shall be in letter form and shall contain the following information:

- (1) The location and the identity of the existing office or branch that will be relocated;
- (2) The exact location of the proposed site, including street address;
- (3) Details of the proposed location, including lease terms, rent, and size; and

- (4) The reasons for the relocation.
- (b) The payment of a \$3 fee shall be submitted with the application to relocate and shall be paid by check made payable to the department of commerce and consumer affairs. The fee shall be nonrefundable.
- (c) Upon approval of the proposed location by the commissioner, the escrow depository shall notify the division by letter that the relocation to the new location has been accomplished. The escrow depository license noting the prior location shall be returned with the letter and the division shall reissue a new license noting the new location.
- (d) Unless otherwise stated, all information pertaining to the notice shall be designated as public information. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-7.5, 449-14)

§16-28-13 Renewal of license. (a) An escrow depository license is subject to annual renewal. In order to obtain renewal of the escrow depository license and any branch office license, the escrow depository shall apply for renewal by filing DFI Form 449/2 at least three weeks prior to July 1 of each year.

(b) The renewal fee of \$25 for the escrow depository license and \$5 for each branch office license shall be paid by check made payable to the department of commerce and consumer affairs concurrently with the filing of the application. The fee shall be nonrefundable. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-8, 449-14)

§16-28-14 Transfer of license or change in control. (a) No escrow depository license shall be transferred.

(b) A bona fide sale of all or substantially all of the ongoing operations of a licensee shall not result in the assignment or transfer of the escrow depository license. The purchaser of all or substantially all of the ongoing operations of a licensee shall file an application for license in accordance with this chapter and shall not act as an escrow depository unless it has been licensed by the commissioner.

(c) If the licensee is a corporation, any intended transfer of its voting stock which may result in the acquisition of control of the licensee may be considered to be a transfer of license. Written notice of any intended transfer of the voting stock which may result in the acquisition of control shall be reported to the commissioner. Upon determination by the commissioner that the intended transfer will result in the acquisition of control, the transferee of the stock shall file an application for a license to act as an escrow depository and shall not acquire control of an escrow depository, until the transferee has been licensed by

the commissioner. For the purposes of this section, "acquisition of control" means acquisition by a person or persons acting in concert of:

- (1) The power to vote twenty-five per cent or more of any class of voting securities of a licensee; or
- (2) Ownership, control, or the power to vote ten per cent or more of a class of voting securities of a licensee, if:
 - (A) The company has issued any class of securities subject to registration under section 12 of the Securities Exchange Act of 1934 (15 United States Code 78); or
 - (B) Immediately after the transaction no other person will own a greater proportion of that class of voting securities. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-8)

SUBCHAPTER 3

NOTICE AND COMMENT PROCEDURES

§16-28-18 Scope. This subchapter applies only to an application for a license to act as an escrow depository. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-19 Notice by publication of application; opportunity to comment and provide information. (a) Upon the filing of an application, the applicant shall publish notice of the proposed transaction in a newspaper of general circulation in the state. The published notice shall include the name of the applicant, the subject matter of the application, and the location or locations at which the applicant proposes to engage in business. A copy of the notice shall be filed with the division.

(b) In order to apprise the public of an opportunity to comment on an application, the notice shall include a statement describing the opportunity to comment on or protest the granting of, or request an informational and comment proceeding on the application. The notice shall include the following statement:

"Any person wishing to comment on the application may file comments in writing with the Commissioner of Financial Institutions (1010 Richards Street, Honolulu, Hawaii 96813) within fifteen days of the date of this notice. The comments may include a statement protesting or supporting the application.

You may at the same time request that an informational and comment proceeding be held on the application. If this proceeding is

requested, you should include a brief statement of your interest in the application, the matters you wish to discuss, and the reasons why a written presentation would not suffice in lieu of the proceeding.

The nonconfidential portion of the application and related documents will be available for inspection within one working day following a request for the application and documents. The application and documents may be inspected at the Division of Financial Institutions during regular business hours." [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-20 Comments on application; request for informational and comment proceeding. (a) Any person may file with the commissioner written comments on an application within fifteen days of the publication of notice. The comment period may be extended by the commissioner for good cause.

(b) Any person who files a written comment may at the same time request that an informational and comment proceeding be held on the application. A request for the proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters the person wishes to discuss at the proceeding, and the reasons why a written presentation would not suffice in lieu of the proceeding. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-21 Informational and comment proceeding. (a) The purpose of the informational and comment proceeding shall be to receive information and comments from interested persons on an application.

(b) If the commissioner decides to hold an informational and comment proceeding, the commissioner shall notify the applicant and each person who requested a proceeding of the date, time, and location of the proceeding, not less than ten days prior to the proceeding. The commissioner may also decide not to hold an informational and comment proceeding, in which case the commissioner shall so advise the applicant and each person who requested the proceeding.

(c) The informational and comment proceeding shall involve a meeting with division representatives at which the participants shall be asked to present their views orally. Separate meetings with each of the participants may be conducted where deemed advisable.

(d) There is no proof to be made during an informational and comment proceeding, and no burden of proof is, therefore, placed on the applicant or any person. Witness statements are unsworn, voluntary, and not subject to any

restriction, except that they pertain to the application. The proceeding shall not be recorded or transcribed.

(e) The informational and comment proceeding shall be open to the public, except when the commissioner determines that the circumstances warrant confidentiality. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

SUBCHAPTER 4

STANDARDS OF REVIEW; DECISIONS

§16-28-25 Scope. This subchapter applies only to an application for a license to act as an escrow depository. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-26 Rights of applicants; obligations of commissioner. An applicant has a right to file an application and to obtain full consideration of the application by the commissioner in light of all relevant facts and without prejudice. If all of the relevant criteria are resolved favorably, the applicant is entitled to receive the requested authorization. In the event an application is disapproved, an applicant has a right to be informed by the commissioner of the reasons for disapproval. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-27 Criteria for proposed escrow depositories. The criteria applied to license applications includes, but is not limited to:

- (1) General character of management. The quality of an escrow depository's management is vital and perhaps the single most important element in determining the applicant's acceptability as an escrow depository. When the management of a proposed escrow depository does not have an operating record as a functioning unit to assist in forming a judgment, the management review involves an evaluation of the individual officers, directors, and escrow officer. An evaluation of shareholders who are subscribing to five per cent or more of the aggregate par value of stock to be issued may also be appropriate in reviewing the general character of management.

In evaluating each officer, director, and escrow officer, and each shareholder subscribing to more than five per cent of the

stock to be issued, the division shall consider, among other things, the following factors:

- (A) Their current and past business experiences, financial capacities, and financial interests;
 - (B) Their proposed duties and responsibilities as related to their business experience and capabilities;
 - (C) Their familiarity with the community or trade area; and
 - (D) Any financing arrangements to purchase stock of the proposed escrow depository.
- (2) Adequacy of capital structure. A proposed escrow depository shall have:
- (A) A minimum net capital structure of the amount dictated by statute;
 - (B) Sufficient balances in shareholder equity accounts against which initial start-up costs and foreseeable contingencies can be charged; and
 - (C) An adequate capital structure as related to its proposed type and volume of business, projected growth, and projected level of earnings.
- (3) Financial history and condition. The pro forma statement of the proposed escrow depository as of the beginning of business, a schedule and appraisal of all assets with which the proposed escrow depository intends to begin business, and projected financial statements for the first three years of operation shall be considered in analyzing this factor. If pertinent, consideration may be given to the history of other escrow depositories presently and formerly operating in the trade area of the applicant.
- (4) Future earnings prospects. Detailed estimates of operating income and expenses for the first three years of operation and the assumptions used in determining the projections shall be analyzed. Information shall include the applicant's plans for payment of cash dividends, bonuses, director's fees, retainer fees, and the accounting method to be used. As regards accounting systems, the division requires use of the accrual method from the outset of operations.
- (5) Convenience and needs of the community. A clear definition of the proposed escrow depository's trade area, a description of the principal economic activities in the trade area, and population figures and trends are essential factors to consider in determining the convenience and needs of the community. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-28 Presumptive disqualification criteria. (a) Managerial resource test. The following factors shall give rise to a rebuttable presumption that the criterion regarding the general character of management has not been met, if the applicant, the individual officers or directors, or any controlling shareholder has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil or administrative action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered any indictment, formal investigation, examination, or civil or administrative proceedings that resulted in any agreement, undertaking, consent, or order issued by any federal or state court, any department, agency, or commission of the United States government, any state or municipality, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involves an act of fraud or dishonesty;
- (4) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (5) Knowingly made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any written or oral statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to material fact, or has wilfully omitted to state a material fact with respect to information furnished or requested in connection with such an application;
- (6) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of state law or rule;
- (7) Been involved in the denial, withdrawal after receipt of formal or informal notice of an intent to deny, by the applicant or affiliates of the applicant, of:
 - (A) Any application relating to the organization of a financial institution;
 - (B) An application to acquire any financial institution, subsidiary or holding company thereof;
 - (C) A notice relating to a change in control of any financial institution, subsidiary or holding company thereof; or
- (8) Been placed in receivership or conservatorship during the preceding ten years, was a management official or director of a financial institution which entered into receivership or conservatorship, was

placed in a management consignment program, or was liquidated during his or her tenure or within two year thereafter.

(b) Financial resource and future prospects test. The following factors shall give rise to a rebuttable presumption that the applicant has not satisfied the financial resources and future prospects criteria:

- (1) Liability for amounts of debt which, in the opinion of the commissioner, create excessive risks of default and pressure on the escrow depository;
- (2) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with the standards of the escrow industry.

(c) Subsections (a) and (b) shall not be deemed an exclusive list of the grounds upon which the commissioner may find that the relevant criteria have not been met. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-29 Action on application; notice of intent to deny application.

(a) Within ninety days following the commissioner's receipt of an application, the commissioner shall determine whether the applicant has met the relevant criteria; provided, however, that if the commissioner has requested additional information from the applicant, the ninety day period shall not commence until all the additional information has been submitted by the applicant. The ninety day period may be extended by the commissioner for a period not exceeding one-hundred twenty days, upon written notification to the applicant.

(b) If the commissioner is satisfied that the applicant meets the relevant criteria, the commissioner shall issue a written final decision and order approving the application.

(c) If the commissioner is not satisfied that the applicant meets the statutory criteria, the commissioner shall send the applicant a written notice of intent to deny the application, which shall include a statement of the reasons for the intended denial.

(d) If the determination is not made by the commissioner within the time specified, the commissioner shall be deemed to have approved the application. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

§16-28-30 Decision approving application; decision denying application subject to contested case hearing; final decision and order. (a) Within fifteen days

following receipt of a notice of intent to deny the application, the applicant may submit information to address or rebut the notice.

(b) If no information is submitted in response to the notice of intent to deny the application, the commissioner, as expeditiously as possible, shall issue a written decision denying the application subject to a contested case hearing and issuance of a final decision and order.

(c) Upon receipt of a response to the notice of intent to deny the application, the commissioner, as expeditiously as possible, shall issue a written decision, either approving the application or denying the application subject to a contested case hearing and issuance of a final decision and order.

(d) Within fifteen days following receipt of a decision denying the application, the applicant may petition the commissioner for a contested case hearing. The contested case hearing shall be held in accordance with chapter 91, HRS, and chapter 16-201.

(e) If a petition for a contested case hearing is not filed within the time specified, the commissioner's decision denying the application shall become a final decision and order denying the application.

(f) Upon the filing of a petition for a contested case hearing, and as expeditiously as possible, the commissioner shall assign the petition to a hearings officer for further proceedings pursuant to sections 16-201-26 through 16-201-47. The commissioner shall issue a written final decision and order as expeditiously as possible, following the hearings officer's transmittal of the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statements in support of the recommended decision. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-6, 449-7, 449-7.5, 449-8)

SUBCHAPTER 5

BONDS AND INSURANCE

§16-28-35 Net capital bond. (a) In lieu of the net capital requirement of \$50,000, an escrow depository may file DFI Form 449/3 and a bond for \$50,000, conditional upon its satisfactory performance of escrow conditions and satisfaction of escrow responsibilities. The escrow depository shall request the approval of the commissioner to file a \$50,000 bond, cash in the amount of \$50,000, or a combination of its net capital and bond totalling \$50,000.

(b) For cash bonds, the escrow depository shall file DFI Form 449/4 or DFI Form 449/5. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: §449-5.5)

§16-28-36 Escrow depository's bond. (a) The escrow depository shall file and execute DFI Form 449/6 as the escrow depository's bond in an amount not less than \$100,000. No deductible amount shall be permitted.

(b) In lieu of the escrow depository's bond, the escrow depository may deposit \$100,000 in the form of:

- (1) A certificate of deposit and file DFI Form 449/7 or DFI Form 449/8; or
- (2) An unconditional and irrevocable letter of credit and file DFI Form 449/9. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-9)

§16-28-37 Fidelity bond. (a) The escrow depository shall file a fidelity bond executed by a surety insurer authorized to do business in the State and in an amount not less than \$25,000. The fidelity bond shall apply to all officers, directors, and employees of the escrow depository who have access to cash, negotiable instruments, or securities within the possession and control of the escrow depository. No deductible amount shall be permitted.

(b) In lieu of the fidelity bond, the escrow depository may deposit \$25,000 in the form of:

- (1) A certificate of deposit and file DFI Form 449/10 or DFI Form 449/11; or
- (2) An unconditional and irrevocable letter of credit and file DFI Form 449/12. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-11)

§16-28-38 Errors and omissions insurance. (a) The escrow depository shall file a policy of errors and omissions insurance in an amount not less than \$100,000, provided that cash equivalent to any deductible amount is maintained, and DFI Form 449/13A or DFI Form 449/13B. The cash reserve shall be maintained by the department of commerce and consumer affairs until the insurance period and any applicable statute of limitation periods have lapsed.

(b) In lieu of the policy of errors and omissions insurance, the escrow depository may file \$100,000 in the form of:

- (1) A certificate of deposit and file DFI Form 449/14 or DFI Form 449/15; or
- (2) An unconditional and irrevocable letter of credit and file DFI Form 449/16. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-12)

§16-28-39 Renewal of bonds and insurance. Bonds and insurance required for an escrow depository may be renewed as of April 1 each year. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §§449-5.5, 449-9, 449-11, 449-12)

SUBCHAPTER 6

AUDITED STATEMENTS

§16-28-44 Audited statements. (a) The escrow depository shall furnish its annual financial statements to the commissioner on or before March 31 of each succeeding year. The financial statements shall be examined by an independent certified public accountant whose report on the financial statements shall be attached. Upon written approval of the commissioner, the fiscal year financial statements together with the independent certified public accountant's report thereon shall be due within ninety days after the close of the fiscal year for those escrow depositories which are on a fiscal year other than a calendar year.

(b) The audited financial statements shall be prepared in accordance with generally accepted accounting principles and the examination by the independent certified public accountant shall be performed in accordance with generally accepted auditing standards. The financial statements and the independent certified public accountant's report shall include, but not be limited to, the following:

- (1) An unqualified opinion on the fair presentation of the financial statements taken as a whole. To the extent that this is not possible, then a detailed footnote explaining the reason why an unqualified opinion could not be given;
- (2) A direct verification of escrow funds and escrow liabilities. If less than a one hundred per cent verification is performed, there shall be a separate letter from the independent certified public accountant indicating the number of accounts verified; the percentage of the verification; the basis for determining the sample size; the method in selecting the sample items to verify; a description of the sampling technique used; the discrepancies noted; and how the discrepancies were resolved;
- (3) Footnotes to the audited financial statement must show the escrow funds and escrow liabilities. To the extent that these amounts differ, there should be a reconciliation of these amounts in the footnotes; and
- (4) A statement as to whether the escrow depository is in compliance with chapter 449, HRS, and this chapter. If the independent

certified public accountant reports any incident involving noncompliance, the statement shall address whether the noncompliance may have a material adverse impact on the ongoing operations of the company.

(c) Except with the written approval of the commissioner, an escrow depository shall not be deemed in compliance with section 449-15, HRS, if the independent certified public accountant expresses a qualified or adverse opinion or a disclaimer of opinion. A request for such approval shall be filed by the escrow depository concurrently with the filing of the audited financial statements and the independent certified public accountant's report. The request shall be in letter form and shall contain the arguments as to why the audited financial statements and the independent certified public accountant's report should be considered acceptable. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-15)

§16-28-45 Audit extensions. The time for filing the audited financial statement and the independent certified public accountant's report may be extended for good cause shown and upon the prior written approval of the commissioner; provided that an extension may not exceed sixty days. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-15)

§16-28-46 Untimely audits. Failure to submit an audited financial statement and the independent certified public accountant's report in a timely manner shall be grounds for an order by the commissioner prohibiting the escrow depository from accepting new business. In addition, the commissioner may order an independent audit to be conducted at the expense of the escrow depository. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-15)

SUBCHAPTER 7

TERMINATION OF OPERATIONS

§16-28-51 Termination of escrow depository operations. (a) An escrow depository that desires to terminate its operations and surrender its license shall notify the commissioner in writing at least fifteen days before the termination date. The licensee shall also advise the commissioner in writing regarding the status of the licensee's operations and the means by which the affairs of the licensee, particularly outstanding escrow accounts, will be handled.

(b) For companies incorporated in the State of Hawaii, the preferred manner of winding down an escrow depository's operations is a voluntary dissolution, as set forth under the provisions of sections 415-83 or 415-84 and sections 415-85, 415-86, 415-87, 415-92, and 415-93, HRS. For companies incorporated in another state, and registered as a foreign corporation, then the preferred method is a withdrawal and surrender of the right to engage in business in the State, pursuant to sections 415-119 and 415-120, HRS.

(c) If an escrow depository decides not to wind down its affairs through a voluntary corporate dissolution or a withdrawal and surrender, the escrow depository should submit to the commissioner the contract or agreement reflecting the assignment or transfer of all outstanding accounts, in addition to the notice required in subsection (a). The escrow depository shall also notify in writing all buyers and sellers whose accounts still contain outstanding balances of the termination of the escrow depository's operations and the specific arrangements made to handle the particular transaction. The escrow depository shall also provide information concerning a contact person for the purpose of answering questions and providing documents on closed accounts. This individual or successor thereof shall continue to perform this task until the applicable statutes of limitations have lapsed.

(d) Upon conclusion of the escrow operations, the company shall file DFI Form 449/17 and provide a certification, signed by its president and secretary, that there are no outstanding escrow liabilities. The commissioner may require that an audit report, prepared by a certified public accountant at the expense of the escrow depository, be submitted showing the final accounting of the company's operations, should circumstances warrant such action. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-7.5, SLH 1987, Act 135)

SUBCHAPTER 8

ENFORCEMENT ACTION

§16-28-55 Suspension or revocation of escrow depository license. (a) The commissioner may suspend or revoke the license of an escrow depository, based on any of the grounds set forth in section 449-17, HRS.

(b) The commissioner shall give the escrow depository notice and an opportunity for a hearing in conformity with chapter 91, HRS. The notice shall be given in writing by registered or certified mail at least twenty days before the hearing, with return receipt requested. [Eff 8/13/87] (Auth: HRS §449-2) (Imp: HRS §449-17)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-28, Hawaii Administrative Rules, on the Summary Page dated July 17, 1987, was adopted on July 17, 1987, following a public hearing held on July 15, 1987, after public notice was given in The Honolulu Advertiser and the Honolulu Star-Bulletin on June 24, 1987.

The adoption of chapter 16-28 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Donna Tanoue

DONNA TANOUE

Commissioner of Financial Institutions

APPROVED AS TO FORM: Date 7/24/87

/s/ Winfred K. T. Pong

Deputy Attorney General

APPROVED: Date 7/24/87

/s/ Robert A. Alm

ROBERT A. ALM

Director of Commerce and Consumer Affairs

APPROVED: Date 8/3/87

/s/ John Waihee

JOHN WAIHEE

Governor
State of Hawaii

August 3, 1987

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-28
Hawaii Administrative Rules

July 17, 1987

SUMMARY

Chapter 16-28, Hawaii Administrative Rules, entitled "Escrow Depositories," is adopted.

THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS IN BRAILLE, LARGE PRINT OR AUDIO TAPE. PLEASE SUBMIT YOUR REQUEST TO THE COMMISSIONER OF FINANCIAL INSTITUTIONS AT (808) 586-2820.

DIVISION OF FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

Chapter 16-28, Hawaii Administrative Rules, which was adopted on July 17, 1987 and became effective on August 13, 1987, was the subject of another opportunity to provide public comment. A public hearing was held on September 12, 1989 at 8:00 a.m. in the Kuhina Nui Room, Kamamalu Building, Department of Commerce and Consumer Affairs. Public notice of the hearing was published on August 2, 1989 in The Honolulu Advertiser, Honolulu Star-Bulletin, West Hawaii today, The Maui News, The Hawaii News, The Hawaii Tribune-Herald, and the Garden Island.

After review of the comments submitted, the Commissioner of Financial Institutions determined that the rules should remain as originally adopted.

/s/ Clifford K. Higa
Clifford K. Higa, Commissioner
Division of Financial Institutions
Department of Commerce and Consumer Affairs

September 18, 1989
Date